

PROCEDURES FOR RECEIVING RIGHTS UNDER THE TREATY OF AMITY AND ECONOMIC RELATIONS BETWEEN THE UNITED STATES AND THAILAND

Prepared by the Commercial Service, American Embassy Bangkok 2000

WHAT IS THE TREATY AND WHOM DOES IT BENEFIT?

The Treaty of Amity and Economic Relations between the United States of America and the Kingdom of Thailand was signed on May 29, 1966. This treaty allows U.S. citizens and businesses to establish a company or branch office in Thailand. Under the treaty, is permitted to do almost anything a Thai company does.

The major benefits of the Treaty are that it allows American companies to own a majority of the shares of its company, branch office located in Thailand and to receive national treatment. That is, they may engage in business on the same basis as Thais, and are exempted from most of the restrictions on foreign investment imposed by the Alien Business Decree of 1972. In return, Thais are extended reciprocal rights to invest in the U.S., and Thai businesspersons are eligible to receive U.S. visas as "treaty traders" and "treaty investors".

Under the Treaty, Thailand is permitted to apply the following restrictions to American and other foreign investment: owning land; engaging in the business of inland communications; inland transportation; fiduciary functions; banking involving depository functions; engaging in domestic trade in indigenous agricultural products; and exploiting land or other natural resources.

It should be noted that as part of agreements reached at the Uruguay Round of the GATT multilateral trade negotiations, Thailand must, by January 1, 2005, offer the same Most Favored Nation (MFN) status to all member-states of the World Trade Organization (WTO) as it does to the U.S. Therefore, Thailand either may accord the same privileges as is offered to the U.S. via the Treaty of Amity and Economic Relations to all other WTO member-states, or simply cancel the Treaty.

WHO IS ELIGIBLE TO RECEIVE RIGHTS UNDER THE TREATY?

To receive protection under the Treaty, the applying person(s) or business organization must be registered and established as an American sole proprietorship, partnership, representative office, branch office, joint venture, or limited company.

For a person wishing to receive protection under the Treaty as a sole proprietorship, he or she must be an U.S. citizen either by birth or naturalization.

For an applying business organization wishing to receive protection under the Treaty as a partnership, branch office, joint venture, or limited company, a majority of the shareholders and directors must be U.S. citizens either by birth or naturalization.

For an applying U.S. company that is a subsidiary to a larger, parent company, the parent or holding company also must have U.S. citizen majority ownership and management.

For an applying U.S. company wishing to invest directly in a Thai company to obtain a majority of the Thai company's shares, the majority of the owners and stockholders of both the applying company and the company to be incorporated must be (or will be, as in the case of the company to be incorporated) U.S. citizens either by birth or naturalization.

REGISTRATION PROCEDURES

To receive protection under the Treaty, the applying business organization must pursue and administrative process to show 'registration under the Treaty.' The Thai government will not recognize an American Company or branch office until it is officially registered. To pursue the administrative process to show "registration under the Treaty," the applying business organization may either consult with one of the many law firms in Thailand or observe the following procedures:

1. For a sole proprietorship, all that is required to seek protection under the Treaty is a notarized copy of the owner's passport or birth certificate to prove U.S. citizenship (either by birth or naturalization). They must send this information to the Commercial Service office at the U.S. Embassy in Bangkok for certification.
2. For a partnership, branch office, joint venture, or limited company, the following documents are required to be notarized by a Notary Public and sent to the Commercial Service office at the Embassy in Bangkok for certification:
 - A. Articles of Incorporation
 - B. Bylaws of the Company
 - C. An Affidavit of the Manager or Corporate Officer, stating the following:
 - Name of the Company, registration number, and date of registration.
 - Address of registered office.
 - Jurisdiction under which the corporation is registered.
 - Name, address, nationality, age and race of each director, number of shares held by each, and identification of the director(s) with the power to bind the company.
 - Authorized capital of the Company, number of shares and par value of each and amount of paid up capital.
 - Total number of shareholders, their nationalities, and number of shares owned or held by them.
3. For an applying U.S. company that is a subsidiary to a larger, parent company, the applying U.S. company, in addition to the above required documents, must also provide the same required documents pertaining to its parent company to the Commercial Service office at the U.S. Embassy in Bangkok.
4. For an applying U.S. company wishing to invest directly in a Thai company to obtain a majority of the Thai company's shares, the applying company must show notarized proof that the majority of owners and directors of both the applying company and the

company to be incorporated are (or will be) U.S. citizens either by birth or naturalization.

5. Upon receipt of the preceding required documents, the Commercial Service then will prepare a document that certifies to the Thai Department of Business Development of the Ministry of Commerce that the applying business organization is an American owned and managed company and is therefore entitled to national treatment under the provisions of the Treaty.

After certification by the Commercial Service, original copies of all the above-mentioned required documents, along with a completed application form that may be obtained from the Department of Business Development of the Ministry of Commerce, must be given to the Thai Department of Business Development of the Ministry of Commerce in order to register under the Treaty and to complete the process.

Please allow at least four to five weeks to complete the entire process. It usually takes less than one week for certification from the Commercial Service office, but registration by the Thai government can take anywhere from a few weeks to a few months. Please note that the above description of the procedure is to the best of the knowledge of the Commercial Service. Consulting with a legal firm in Thailand may still be advisable.

For information contact:

The Commercial Service
American Embassy
Diethelm Towers, Tower A, Suite 302, 3/F
93/1 Wireless Road,
Pathumwan, Bangkok 10330
Thailand
Tel: 662-205-5090
Fax: 662-255-2915
E-mail: bangkok.office.box@mail.doc.gov

Treaty of Amity Registration Procedures

1. **File documents:** To begin the process, documents listed below must be filed with the U.S. & Foreign Commercial Service in Diethelm Tower A on Wireless Road

<i>Type of Organization</i>
<ul style="list-style-type: none"> Sole Proprietorship Partnership, Branch Office, Joint Venture, or Limited Company U.S. Subsidiary U.S. Company acquiring Thai company

Documents Required	
Sole Proprietorship:	Partnership, Representative Office, Branch Office, Joint Venture, or Limited company
<ul style="list-style-type: none">Notarized copy of owner’s passport or birth certificate to prove U.S. citizenship.	
<ul style="list-style-type: none">Notarization services can be obtained at the U.S. Embassy’s American Citizen Services	
U.S. Subsidiary	<ul style="list-style-type: none">Articles of Incorporation
<ul style="list-style-type: none">Same as above for both subsidiary and parent company	<ul style="list-style-type: none">Bylaws of the Company
	<ul style="list-style-type: none">An affidavit of the Manager or Corporate Officer, stating the following:<ul style="list-style-type: none">a) Name of the Company, registration number, and date of registration.b) Address of registered officec) Name/ Address/ Nationality/ age and race of each director, number of shares held by each, and identification of the director(s) with the power to bind the companyd) Authorized capital of the Company, number of shares and par value of each and amount of paid up capitale) Total number of shareholders, their nationalities, and number of shares owned or held by themf) Notarized copy of American Shareholders’ passports
U.S. company acquiring Thai Company	
<ul style="list-style-type: none">For an applying US company wishing to invest directly in a Thai company so as to obtain a majority of Thai company’s shares, the applying company must show notarized proof that the majority of owners and directors of both the applying company and the company to be incorporated are (or will be) US citizens either by birth and naturalization.	

Please submit the required documents ***both in copies and originals*** along with a request form (attached) and a cover letter to Mr. Scott A. Shaw, Commercial Attaché.

The original documents will be returned together with the certificate.

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| <p>2. <u>Certification by US&FCS</u> : Upon receipt of the preceding required documents the FCS office then will certify to the Thai Department of Commercial Registration in the Ministry of Commerce that the applying business organization is an American owned and managed company and is therefore entitled to national treatment under the provisions of the Treaty.</p> |
| <p>3. <u>Application to Ministry of Commerce</u> : After certification by the FCS, original copies of all the above-mentioned required documents, along with a completed application form which may be obtained from the Department of Registration in the Thai Ministry of Commerce, must be given to the Thai Department of Commercial Registration in the Ministry of Commerce in order to fully register under the Treaty.</p> |